



Billing Code 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2015–0172; FF07M01000-178-FXMB12310700000]

RIN 1018-BB24

Migratory Bird Subsistence Harvest in Alaska; Use of Inedible Bird Parts in Authentic Alaska Native Handicrafts for Sale

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is amending the permanent migratory bird subsistence-harvest regulations in Alaska. This rule enables Alaska Natives to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence-harvest season. This rule was developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]

IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786-3499.

SUPPLEMENTARY INFORMATION:

Background

We are amending the permanent migratory bird subsistence-harvest regulations in Alaska. This rule was developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 8–9, 2015, to develop recommendations for changes that would take effect starting during the 2016 harvest season. Changes were recommended for the permanent regulations at subpart A of Title 50 of the Code of Federal Regulations (CFR) at 50 CFR part 92 to allow sale of handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. These recommended changes were presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the committee’s meeting on July 31, 2015.

We published a proposed rule to make the recommended changes to the regulations at subpart A of 50 CFR part 92 on June 17, 2016 (81 FR 39618). We accepted public comments on the proposed rule for 60 days, ending August 16, 2016. A summary of the comments we received, and our responses to them, is provided below, under **Summary of Comments and Responses**.

This Final Rule

This rule amends the regulations at 50 CFR 92.6 to enable Alaska Natives to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence-harvest season.

At 50 CFR 92.4, we are adding definitions for “Authentic Native article of handicraft or clothing,” “Migratory birds authorized for use in handicrafts or clothing,” and “Sale by consignment.” We add these definitions to explain the terms we use in our changes to 50 CFR 92.6, which are explained below.

We are adding a provision to 50 CFR 92.6 to allow sale of handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. A request was made by Alaska Native artisans in Kodiak to use the inedible parts, primarily feathers, from birds taken for food during the subsistence hunt, and incorporate them into handicrafts for sale. Our June 17, 2016, proposed rule (81 FR 39618) was developed in a process involving a committee composed of Alaska Native representatives from Yukon-Kuskokwim Delta, Bering Straits, North Slope, Kodiak, Bristol Bay, Gulf of Alaska, Aleutian-Pribilof Islands, and Northwest Arctic; representatives from the Alaska Department of Fish and Game; and Service personnel.

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia and from the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703 *et seq.*). Specifically, we are issuing this final rule pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the

collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.” Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (“the Protocol”) provides a legal basis for Alaska Natives to be able to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Letter of Submittal dated May 20, 1996, for the Treaty Protocol states: “The provisions of Article II(4)(b) will be implemented so that birds are taken only for food. Non-edible by-products of birds taken for nutritional purposes incorporated into authentic articles of handicraft by Alaska Natives may be sold in strictly limited situations and pursuant to a regulation by the competent authority in cooperation with management bodies. Regulations allowing such harvest will be consistent with the customary and traditional uses of indigenous inhabitants for their nutritional and essential needs.”

Allowing Alaska Natives a limited sale of handicrafts containing inedible migratory bird parts provides a small source of additional income that we conclude is necessary for the “essential needs” of Alaska Natives in predominantly rural Alaska. Moreover, we conclude, consistent with the language of the Protocol and as expressly noted in the Letter of Submittal, that this limited opportunity for sale is consistent with the customary and traditional uses of Alaska Natives. Finally, we conclude this regulation is consistent with the preservation and maintenance of migratory bird stocks. We previously concluded that our subsistence-hunting-season regulations at 50 CFR part 92 (issued most recently as the Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2016 Season,

April 1, 2016, 81 FR 18781) are consistent with the preservation and maintenance of migratory bird stocks. Here, this rule provides for only the additional use of inedible parts of certain species acquired during the legal Alaska subsistence harvest, not any additional hunting. Although we recognize that it is possible that this rule might provide an incentive for Alaska Natives to engage in additional harvest for nutritional purposes, we conclude that any such effect will be minimal. In addition, Alaska migratory bird subsistence harvest rates have continued to decline since the inception of the subsistence-harvest program, reducing concerns about the program's consistency with the preservation and maintenance of stocks of migratory birds. In the unlikely event that any of the 27 species of birds allowed show substantial population declines, FWS retains the ability both remove the eligible species at issue from §92.6(b), and/or to close the subsistence hunt under §92.21.

The biggest challenge was developing a list of migratory birds that could be used in handicrafts. This required cross-referencing restricted species listed in the Treaties with Russia, Canada, Mexico, and Japan with those allowed to be taken in the subsistence harvest. Recognizing that the Japan Treaty was the most restrictive, the committee compiled a list of 27 species of migratory birds from which inedible parts could be used in handicrafts for sale. We proposed to allow the limited sale, including consignment sale, by Alaska Natives of handicrafts made using migratory bird parts. Our proposal included a requirement for the artist's tribal certification or Silver Hand insignia to limit counterfeiting of handicrafts.

Who Is Eligible To Sell Handicrafts Containing Migratory Bird Parts Under This Rule?

Under Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States, only

Alaska Natives are eligible to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales will be under a strictly limited situation. Eligibility will be shown by a Tribal Enrollment Card, Bureau of Indian Affairs card, or membership in the Silver Hand program. The State of Alaska Silver Hand program helps Alaska Native artists promote their work in the marketplace and enables consumers to identify and purchase authentic Alaska Native art. The insignia indicates that the artwork on which it appears is created by hand in Alaska by an individual Alaska Native artist. Only original contemporary and traditional Alaska Native artwork, not reproductions or manufactured work, may be identified and marketed with the Silver Hand insignia. To be eligible for a 2-year Silver Hand permit, an Alaska Native artist must be a full-time resident of Alaska, be at least 18 years old, and provide documentation of membership in a federally recognized Alaska Native tribe. The Silver Hand insignia may only be attached to original work that is produced in the State of Alaska.

How Will the Service Ensure that These Regulations Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

Under this rule, Alaska Natives are permitted to only sell authentic native articles of handicraft or clothing that contain an inedible byproduct of migratory birds that were taken for food during the Alaska migratory bird subsistence-harvest season. Harvest and possession of these migratory birds must be conducted using nonwasteful taking.

Under this rule, handicrafts may contain inedible byproducts from only bird species listed at 50 CFR 92.6(b)(1) that were taken for food during the Alaska migratory bird subsistence-harvest season. This list of 27 migratory bird species came from cross-referencing restricted

(from sale) species listed in the Treaties with Russia, Canada, Mexico, and Japan with those allowed to be taken in the subsistence harvest. The migratory bird treaty with Japan was the most restrictive and thus dictated the subsistence harvest species from which inedible parts could be used in handicrafts for sale. None of the 27 species are currently ESA listed, are proposed for listing or are candidates for listing. In addition, all sales and transportation of sold items are restricted to within the United States (including territories).

We have monitored subsistence harvest for over 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive harvest surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to all forms of subsistence harvest and thus are not authorized to have their inedible parts used to make handicrafts for sale. Though use of both king and common eiders is permitted by this regulation, we do not expect that this regulation will have an adverse impact on listed eiders because: listed eider density in the subsistence-hunt area is low; effects of waterfowl substance harvest are periodically evaluated; listed eiders remain closed to harvest under the MBTA; and we do not expect increased harvest of migratory birds, and consequently listed eiders.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to “review other programs administered by him and utilize such programs in furtherance of the purposes of the Act” and to “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.” We conducted an intra-agency consultation with the Service’s Fairbanks Fish and Wildlife Field Office on this action as it will be managed in accordance with this final rule and the conservation measures. The consultation on handicraft sales was completed with a Letter of Concurrence dated December 29, 2015 on a not-likely-to-adversely-affect determination for spectacled and Steller’s eiders.

Summary of Comments and Responses

On June 17, 2016, we published in the **Federal Register** a proposed rule (81 FR 39618) to amend our regulations to allow Alaska Natives to sell authentic Native articles of handicraft or clothing that contain inedible byproducts from migratory birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. We accepted public comments on the proposed rule for 60 days, ending August 16, 2016. We posted an announcement of the comment-period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council’s Internet homepage. By facsimile (fax), we issued a press release, announcing our request for public comments and the pertinent deadlines for such comments, to the media Statewide in Alaska. Additionally, we made all relevant documents available on <http://www.regulations.gov>. In response to the proposed rule, the Service received 6

responses. The comments are addressed below by topic.

Comment (1): We received one comment strongly supporting the proposed rule and commending the co-management process that led to its development.

Service Response: We thank the commenter for the show of support for this process.

Comment (2): We received one comment questioning how we would ensure that birds taken for inedible parts are not wasted.

Service Response: This rule allows the use in handicrafts of inedible parts obtained from migratory birds that have been taken for human consumption. The rule does not allow birds to be taken only for their inedible parts. Moreover, the regulations at 50 CFR 92.6(a) require that all migratory birds harvested for subsistence be taken using nonwasteful techniques, meaning that all edible meat must be retained until the birds have been transported to where they will be consumed, processed, or preserved as human food (see definition of *Nonwasteful taking* at 50 CFR 92.4). Using the inedible parts in craft-making does not exempt the taking from this requirement.

Comment (3): We received one comment questioning who would be going to the gift shops and identifying the specific species taken and how they will identify species from the feathers only. The commenter added that it is already difficult to protect Alaska Native crafts from being made by non-Native crafters, and that the proposed rule would bring further complications and more need for enforcement that is not available.

Service Response: Our law enforcement agents are trained to identify migratory birds from feathers and other parts. As always, our agents will monitor the trade by proactive

enforcement and by responding to information provided by concerned citizens. As for the concern of non-Native crafters, the Silver Hand program will aid in identifying crafts made from Alaska Natives. Also see our response below on Comment (8) on the authentication requirements.

Comment (4): We received one comment stating that the proposed rule declined to list individual Alaska Native entities consulted with, and that the consultation appeared to leave out all Athabaskan people.

Service Response: Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), titled “Consultation and Coordination with Indian Tribal Governments,” and with the Department of the Interior Policy on Consultation with Indian Tribes (Secretarial Order No. 3317; December 1, 2011), on June 23, 2016, we sent letters via electronic mail to all 229 Alaska Federally recognized Indian tribes, including Athabaskan tribes (which we sent to their official email address), soliciting their input as to whether or not they would like the Service to consult with them on the proposed rule to enable Alaska Natives to sell authentic native articles of handicraft or clothing that contain inedible byproducts from migratory birds. Consistent with Congressional direction (Pub. L. 108-199, div. H, sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also sent similar letters to approximately 200 Alaska Native corporations and other tribal entities Statewide in Alaska. We did not receive any requests to consult.

Comment (5): We received two comments that stated that the proposed rule opens up commercial use of migratory birds for the first time and is at odds with the language of the

Migratory Bird Treaty Act and the Treaty Protocols. The commenters stated that if we amend our regulations, which already provide for harvest for food, so as to allow commercial sale of bird parts, we must make the two required findings that doing so is necessary to provide for “essential needs” of Alaska Natives and is also consistent with the “preservation and maintenance of stocks of migratory birds.” The commenters further stated that nowhere in Article II(4)(b) of the Protocol is commercial sale authorized.

Service Response: The commenter is correct that the Article II(4)(b) does not expressly authorize commercial sale. However, Article II(4)(b)(i) recognizes the authority of the United States to promulgate “other regulations” regarding take that are “consistent with the customary and traditional uses [of Alaska Natives for their] other essential needs.” Any ambiguity as to whether the Protocol contemplates commercial sale is resolved by the Letter of Submittal discussed above. Allowing Alaska Natives a limited sale of handicrafts containing inedible migratory bird parts provides a small source of additional income that would meet “essential needs” in predominantly rural Alaska. Similarly, Senate Report 105-5 recognized this in that “Commercial use would not be permitted aside from limited sales of inedible by-products of birds taken for food which are then incorporated into authentic, traditional handicraft items. Such use would be strictly controlled by the competent authorities. This interpretation of takings for “nutritional and other essential needs” can also be traced back to the U.S.-U.S.S.R. Treaty.” The MBTA itself allows the Secretary to issue regulations necessary to assure that taking by Alaska Natives will be permitted for their “nutritional and other essential needs, as determined by the Secretary . . . , during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.” 16 U.S.C. 712(1).

As discussed in the “This Final Rule” section, above, we have concluded that this

regulation is necessary for the essential needs of Alaska Natives, and that this regulation, and the underlying take for nutritional purposes, is consistent with the preservation and maintenance of migratory bird stocks. To the extent that the commenters are asserting that we are required to issue separate, formal “findings” documents, we disagree. Nothing in the Protocol or the MBTA suggests such a requirement.

Comment (6): We received one comment that the proposed rule only addresses inedible bird parts that were obtained through the subsistence harvest and does not address commercial use of inedible bird parts obtained without taking birds.

Service Response: Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (“the Protocol”) provides a legal basis for Alaska Natives to be able to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales must be under a strictly limited situation pursuant to a regulation by a competent authority in cooperation with management bodies. The Protocol does not authorize the taking of migratory birds for commercial purposes. Under the Protocol, only Alaska Natives are eligible to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest.

We interpret Article II(4)(b) to narrowly require the use of bird parts be from birds taken as part of the subsistence harvest, and use of bird parts obtained in any other manner (found parts) would not be allowed. The Protocol discusses subsistence hunting and, as explained by the Letter of Submittal, specifically allows only for the “sale of non-edible byproducts of birds

taken for nutritional purposes incorporated into authentic articles of handicraft.” The Protocol does not expand the sale of non-edible bird parts in to handicraft for birds parts obtained in any other manner.

Comment (7): One commenter stated that other than its publication in the **Federal Register**, they were unaware of the Service providing meaningful public notice of the rulemaking and felt that the Service should reopen the comment period and provide broader notice of the proposed rule’s availability to more meaningfully engage those members of the public.

Service Response: We published our proposed rule in the **Federal Register** on June 17, 2016 (81 FR 39618). The **Federal Register** is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as Executive Orders and other presidential documents. One purpose of **Federal Register** publication is to give interested persons an opportunity to participate in the rulemaking process prior to the adoption of a final rule. We accepted public comments on our June 17, 2016, proposed rule for 60 days, ending August 16, 2016.

In addition, we posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council’s website at [http:// www.fws.gov/alaska/ambcc/news.htm](http://www.fws.gov/alaska/ambcc/news.htm). By facsimile (fax), we issued a press release, announcing our request for public comments and the pertinent deadlines for such comments, to the media Statewide in Alaska. Further, we made all relevant documents available on <http://www.regulations.gov>. These measures constitute adequate notice of our proposed amendments to the regulations, and we thus provided adequate opportunities for meaningful

engagement to members of the public in the rulemaking process.

Comment (8): The Service should consider whether and how allowing the commercial trade in otherwise protected bird parts under the proposed rule could inadvertently serve as a vehicle to provide cover for broader unlawful trade in bird parts both in Alaska and elsewhere.

Service Response: Each handicraft item for sale must be accompanied by authentication that it was created by an Alaska Native craft person. These items can be sold by the Alaska Native themselves or by a consignee for the Native craft person, and cannot be resold. The Indian Arts and Crafts Act of 1990 (Pub. L. 101-644) is a truth-in-advertising law that prohibits misrepresentation in marketing of Indian arts and crafts products within the United States. It is illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization, resident within the United States. For a first-time violation of the Act, an individual can face civil or criminal penalties of up to \$250,000 in fines and 5-year prison term. Also, see the above Comment (3) on law enforcements efforts to identify bird parts.

Comment (9): One commenter was concerned that the proposed rule would set a precedent for allowing the commercialization of migratory birds. The commenter believes that allowing such sales would increase the potential for other requests in the future, especially from tribal members in the lower 48 States that also make handicrafts.

Service Response: The proposed rule, and this final rule, is authorized by Treaty Protocol specific to Alaska. The Letter of Submittal dated May 20, 1996, for the Treaty Protocol, specifically Article II(4)(b) of the Protocol between the United States and Canada amending the

1916 Convention for the Protection of Migratory Birds in Canada and the United States (“the Protocol”) provides a legal basis for Alaska Natives to be able to sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. See above Comments (5) and (6) for more on the Protocol. Expanding this opportunity to sales by other American Native tribes would require new, additional congressional legislation for authorization.

Comment (10): We received one comment stating that the proposed rule is subject to insufficient public and environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Service Response: Article II(b)(ii) of the amended Treaty Protocol specifies that “indigenous inhabitants of the State of Alaska shall be afforded an effective and meaningful role in the conservation of migratory birds including the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of their eggs, by participating on relevant management bodies.” In response to the direction of the Protocol, in 1998, Service initiated Statewide public meetings in Alaska to determine what system of implementation would best meet the needs of the local harvesters. Based on input from the public process, the Service established an organizational structure to meet the mandates of the Treaty. That structure is composed of three key elements. First, the Alaska Migratory Bird Co-management Council (Co-management Council) was established including Federal, State, and Alaska Native. Second, regional management bodies, consisting of local people, were established. The regional bodies provide representatives to the Co-management Council. Third, partner organizations were identified within each region; these partner organizations are

responsible for compiling and coordinating communications between their local residents and the Council.

In December 2011 Alaska Native artisans in Kodiak requested to be authorized to use the nonedible parts, mostly feathers, from birds taken for food during the subsistence hunt, and incorporate them into handicrafts for sale. Over a 4-year period, proposed regulations were developed in a process involving a committee composed of Alaska Native representatives from eight rural regions in Alaska (Yukon-Kuskokwim Delta, Bering Straits-Norton Sound, North Slope, Kodiak, Bristol Bay, Gulf of Alaska, Aleutian-Pribilof Islands, Northwest Arctic) and representatives from the Alaska Department of Fish and Game and the Service. This lengthy process involved over 45 public meetings over the course of the development period. All public meetings were announced in advance via press releases.

Regarding the environmental review, we prepared an environmental assessment (EA) and made it available for public review during the comment period on the June 17, 2016, proposed rule (81 FR 39618). We received one public comment specific to the analysis contained in our EA (see *Comment (11)*, below). After evaluation of the public comment, we made a finding of no significant impact (FONSI) for this final rule, in accordance with 43 CFR 46.325. Thus, we have met the requirements of NEPA.

Comment (11): One commenter pointed out that the environmental assessment did not include a detailed analysis of the species proposed for harvest including population size, harvest levels, and what impacts harvest might have on these species. In addition, the commenter stated that there should have been an additional alternative discussed: to open the commercial use of inedible parts only from birds with populations known to be stable or increasing.

Service Response: This rule allows inedible byproducts of certain migratory birds taken for food during the Alaska migratory bird subsistence harvest to be used in the making of authentic Native articles of handicraft or clothing. The relevant migratory bird species are set forth at 50 CFR 92.6(b)(1). The 2016 annual subsistence harvest regulations are covered in an October 2015 environmental assessment (EA), “Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2016 Spring/Summer Harvest,” dated October 9, 2015. A thorough description of the affected environment of the subsistence harvest is included in this EA, which covers the migratory bird resource, including: population information; relationship of Alaska subsistence and waterfowl to the four flyways and Canada; relationship of Alaska subsistence and seabirds to the Pacific Flyway, Canada, and Russia; migratory bird habitat; involved peoples; and the social-economic characteristics of the Alaska subsistence migratory bird harvests.

There is some overlap between species eligible to be harvested in the subsistence harvest and the list of Service’s Birds of Conservation Concern (2008). We discussed this issue in a final rule published in the **Federal Register** on April 2, 2004 (69 FR 17318). If an alternative had been posed in the EA to allow use of inedible parts only from bird species known to be stable or increasing, it would significantly undermine the intended purpose of the proposed regulations, which is to allow the productive use in handicrafts of inedible parts of birds, taken for subsistence purposes, to help Alaska Natives meet their essential needs. We do not expect that allowing Alaska Natives a limited sale of handicrafts containing inedible parts of migratory birds taken during the subsistence season will significantly increase harvest rates or have a significant impact on any of the bird species listed at 50 CFR 92.6(b)(1) or on the environment. There are several reasons for this. First, Alaska subsistence harvest rates have continued to

decline over the past years, similarly to declining Alaska sport-hunting harvest rates. Second, as discussed above, handcraft items must be created by hand by an Alaska Native, so there would be limited producers of handicrafts. Third, product sales will be limited to being conducted by Alaska Natives or their consignees. Fourth, the market for traditional Alaska Native art is limited and not a major item of commerce, especially when international sale is prohibited. Also, continued monitoring of the subsistence harvest will enable tracking trends in harvest levels. Thus in the unlikely event that any of the 27 species of birds allowed show substantial population declines, FWS retains the ability both to remove the eligible species at issue from §92.6(b), and to close the subsistence hunt under §92.21.

Comment (12): One commenter was concerned that the Service has a limited ability to track subsistence harvest in Alaska and also has no mechanism in place to monitor changes in bird population levels in response to this new activity. The commenter also felt that the Service should specify what levels of harvest and/or bird abundance would trigger a regulatory response to ensure conservation of individual species.

Service Response: We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence-harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions reporting some subsistence harvest of threatened species. Future survey efforts will concentrate on providing Statewide estimates of harvest.

As for monitoring bird population levels, the Service’s Migratory Bird Program and its partners developed and continue to carry out a long-term comprehensive survey of migratory

bird abundance, the Aerial Waterfowl Breeding Population and Habitat Survey. This survey monitors changes in waterfowl population levels throughout North America, including all primary waterfowl production areas in Alaska. Additional breeding-population surveys on the Yukon Delta and the Arctic Coastal Plain provide annual assessments of waterfowl population size and trend with relatively high levels of precision. Because migratory birds range widely over their annual cycles within Alaska, the Service also conducts monitoring surveys during migration and midwinter periods. Results from these surveys are reported annually to the Flyways and are posted on Service's website

at: <https://www.fws.gov/birds/news/160810waterfowl-status.php>

We do not agree that setting express numerical triggers for a regulatory response would be helpful. Under 50 CFR 92.21, the Service has the authority to close, on an emergency basis, any subsistence harvest activity upon finding that the activity poses an imminent threat to the conservation of any endangered or threatened bird species or other migratory bird population. None of the 27 species are currently ESA listed, proposed for listing, or candidates for listing.

Comment (13): One commenter was concerned that the proposed regulations would increase the harvest for the sole purpose of profit and would expand the economic market for use of the inedible bird parts in Native handicrafts.

Service Response: Under this rule, handicrafts may contain inedible byproducts from only birds taken for food during the Alaska migratory bird subsistence harvest season. We do not expect that allowing Alaska Natives a limited sale of handicrafts containing inedible parts of migratory birds taken during the subsistence season will significantly increase migratory bird harvest rates. There are several reasons for this. First, Alaska subsistence harvest rates have

continued to decline over the past years. Second, as discussed above, handcraft items must be created by hand by an Alaska Native, so there would be limited producers of handicrafts. Third, product sales will be limited to being conducted by Alaska Natives or their consignees. Fourth, the market for traditional Alaska Native art is limited and not a major item of commerce, especially when international sale is prohibited. This rule will increase the market for Alaska Native handicrafts containing inedible bird parts given currently there is no legal market; however, we conclude that the increase will not pose a significant environmental impact. Our law enforcement agents will be monitoring sales closely during and after implementation. Also, continued monitoring of the subsistence harvest will enable tracking trends in harvest levels.

Summary of Changes from Proposed Rule

We amended the last sentence for clarification in the definition of “Sales by Consignment” to: The consignment seller need not be an Alaska Native and the Alaska Native craftsman retains ownership of the item and will receive money for the item when it is sold. We then also struck “(Alaska Native or non-Alaska Native)” from the beginning of the definition.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential

needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

Article II(4)(b) of the Protocol between the United States and Canada amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States provides a legal basis for Alaska Natives to be able sell handicrafts that contain the inedible parts of birds taken for food during the Alaska spring and summer migratory bird subsistence harvest. The Protocol also dictates that sales would be under a strictly limited situation pursuant to a regulation by a competent authority in cooperation with management bodies. The Protocol does not authorize the taking of migratory birds for commercial purposes.

Required Determinations

Executive Order 13771

This final rule is considered to be an Executive Order (E.O.) 13771 deregulatory action (82 FR 9339, February 3, 2017). The net benefits associated with the implementation of this final rule are estimated to be \$362,200 per year.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility

and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This final rule will affect Alaska Natives selling authentic native articles of handicraft or clothing such as headdresses, native masks, and earrings. We estimate that the majority of Alaska natives selling authentic native articles of handicraft or clothing are small businesses. Alaska Native small businesses within the manufacturing industry, such as Pottery, Ceramics,

and Plumbing Fixture Manufacturing (NAICS 327110 small businesses have <750 employees), Leather and Hide Tanning and Finishing (NAICS 316110), Jewelry and Silverware Manufacturing (NAICS 339910 small businesses have <500 employees), and all other Miscellaneous Wood Product Manufacturing (NAICS 321999 small businesses have <500 employees), may benefit from some increased revenues generated by additional sales. We expect that additional sales or revenue will be generated by Alaska Native small businesses embellishing or adding feathers to some of the existing handicrafts, which may slightly increase profit. The number of small businesses potentially impacted can be estimated by using data from the Alaska State Council of the Arts, which reviews Silver Hand permits. Currently, there are about 1,800 Silver Hand permit holders, of which less than 1 percent sell more than 100 items annually, and they represent a small number of businesses within the manufacturing industry. Due to the small number of small businesses affected and the small increase in overall revenue anticipated from this final rule, it is unlikely that a substantial number of small entities will have more than a small economic effect (benefit). Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more. Alaska Native tribes will have a small economic benefit through being allowed to incorporate inedible

bird parts into their authentic handicrafts or handmade clothing and to sell the products. However, the birds must have been harvested for food as part of the existing subsistence hunt, and only a limited list of 27 species may be used. The intent is to allow limited benefits from salvage of the inedible parts, not to provide an incentive for increasing the harvest. This rule should not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities regulated under this final rule are inedible parts of migratory birds taken for food under the subsistence harvest that are incorporated into Native handicrafts. Most, if not all, businesses that sell the authentic Alaska Native handicrafts qualify as small businesses. We have no reason to believe that this final rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This final rule does deal with the sale of authentic Alaska Native handicrafts, but should not have any impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This final rule does not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this final rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The final rule does not have a

significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule will not have significant takings implications. This final rule is not specific to particular land ownership, but applies to the use of the inedible parts of 27 migratory bird species in authentic Alaska Native handicrafts. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We worked with the State of Alaska to develop this final rule.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this final rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Government-to-Government Relations with Native American Tribal Governments

Consistent with E.O. 13175 (65 FR 67249; November 6, 2000), titled “Consultation and Coordination with Indian Tribal Governments,” and Department of the Interior Policy on Consultation with Indian Tribes (December 1, 2011), on June 23, 2016, we sent letters via electronic mail to all 229 Alaska Federally recognized Indian tribes soliciting their input as to whether or not they would like the Service to consult with them on the proposed regulations to

allow Alaska Natives to sell authentic Native articles of handicraft or clothing that contain inedible byproducts from migratory birds that were taken for food during the Alaska migratory bird subsistence harvest (81 FR 39618; June 17, 2016). Consistent with Congressional direction (Pub. L. 108-199, div. H, sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also sent similar letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska. We did not receive any requests to consult.

Paperwork Reduction Act of 1995 (PRA)

This final rule contains a collection of information that we have submitted to the Office of Management and Budget (OMB) for review and approval under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements in this rule and assigned OMB Control Number 1018-0168, which expires 01/31/2020.

This final rule requires that a certification (FWS Form 3-2484) or a Silver Hand insignia accompany each Alaska Native article of handicraft or clothing that contains inedible migratory bird parts. It also requires that all consignees, sellers, and purchasers retain this documentation with each item and produce it upon the request of a law enforcement officer. We have reviewed FWS Form 3-2484 and determined that it is a simple certification, which is not subject to the PRA. We are requesting that OMB approve the recordkeeping requirement to retain the certification or Silver Hand insignia with each item and the requirement that artists and sellers/consignees provide the documentation to buyers.

Title: Alaska Native Handicrafts, 50 CFR 92.6.

OMB Control Number: 1018-0168.

Service Form Number(s): None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Individuals and businesses.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Ongoing.

Estimated Number of Respondents: 8,749 (7,749 buyers and 1,000 artists, sellers, and consignees).

Estimated Number of Annual Responses: 18,081.

Estimated Completion Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,507 hours.

Estimated Total Nonhour Burden Cost: None.

We accepted public comments on the information collection aspects of our June 17, 2016, proposed rule for 30 days, ending July 18, 2016. We did not receive any comments on the information collection aspects of the proposed rule.

The public may comment, at any time, on the accuracy of the information collection burden in this rule and may submit any comments to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ATTN: BPHC, 5275 Leesburg Pike Falls Church, VA 22041-3803.

Energy Supply, Distribution, or Use (Executive Order 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking

certain actions. This is not a significant regulatory action under this Executive Order. Further, we do not expect this final rule to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under E.O. 13211, and a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

2. Amend § 92.4 by adding, in alphabetical order, definitions for “*Authentic Native article of handicraft or clothing*,” “*Migratory birds authorized for use in handicrafts or clothing*,” and “*Sale by consignment*” to read as follows:

§ 92.4 Definitions.

* * * * *

Authentic Native article of handicraft or clothing means any item created by an Alaska Native to which inedible parts of migratory birds authorized for use in handicrafts or clothing are incorporated and which is fashioned by hand, or with limited use of machines, provided no mass

production occurs.

* * * * *

Migratory birds authorized for use in handicrafts or clothing means the species of birds listed at §92.6(b) that were taken for food in a nonwasteful manner during the Alaska subsistence-harvest season by an eligible person of an included area.

* * * * *

Sale by consignment means that an Alaska Native sends or supplies an authentic Native article of handicraft or clothing to a person who sells the item for the Alaska Native. The consignment seller need not be an Alaska Native and the Alaska Native craftsman retains ownership of the item and will receive money for the item when it is sold.

* * * * *

3. Revise § 92.6 to read as follows:

§92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part, except as provided in this section.

(a) *Giving and receiving migratory birds.* Under this part, you may take migratory birds for human consumption only. Harvest and possession of migratory birds must be conducted using nonwasteful taking. Edible meat of migratory birds may be given to immediate family members by eligible persons. Inedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is prohibited, and these byproducts may only be given to other eligible persons or Alaska Natives.

(b) *Authentic native articles of handicraft or clothing.* (1) Under this section, authentic native articles of handicraft or clothing may be produced for sale only from the following bird species:

- (i) Tundra swan (*Cygnus columbianus*).
- (ii) Blue-winged teal (*Anas discors*).
- (iii) Redhead (*Aythya americana*).
- (iv) Ring-necked duck (*Aythya collaris*).
- (v) Greater scaup (*Aythya marila*).
- (vi) Lesser scaup (*Aythya affinis*).
- (vii) King eider (*Somateria spectabilis*).
- (viii) Common eider (*Somateria mollissima*).
- (ix) Surf scoter (*Melanitta perspicillata*).
- (x) White-winged scoter (*Melanitta fusca*).
- (xi) Barrow's goldeneye (*Bucephala islandica*).
- (xii) Hooded merganser (*Lophodytes cucullatus*).
- (xiii) Pacific loon (*Gavia pacifica*).
- (xiv) Common loon (*Gavia immer*).
- (xv) Double-crested cormorant (*Phalacrocorax auritus*).
- (xvi) Black oystercatcher (*Haematopus bachmani*).
- (xvii) Lesser yellowlegs (*Tringa flavipes*).
- (xviii) Semipalmated sandpiper (*Calidris semipalmatus*).
- (xix) Western sandpiper (*Calidris mauri*).

- (xx) Wilson's snipe (*Gallinago delicata*).
- (xxi) Bonaparte's gull (*Larus philadelphia*).
- (xxii) Mew gull (*Larus canus*).
- (xxiii) Red-legged kittiwake (*Rissa brevirostris*).
- (xxiv) Arctic tern (*Sterna paradisaea*).
- (xxv) Black guillemot (*Cepphus grylle*).
- (xxvi) Cassin's auklet (*Ptychoramphus aleuticus*).
- (xxvii) Great horned owl (*Bubo virginianus*).

(2) Only Alaska Natives may sell or re-sell any authentic native article of handicraft or clothing that contains an inedible byproduct of a bird listed in paragraph (b)(1) of this section that was taken for food during the Alaska migratory bird subsistence harvest season. Eligibility under this paragraph (b)(2) can be shown by a Tribal Enrollment Card, Bureau of Indian Affairs card, or membership in the Silver Hand program. All sales and transportation of sold items are restricted to within the United States. Each sold item must be accompanied by either a certification (FWS Form 3-2484) signed by the artist or a Silver Hand insignia. Purchasers must retain this documentation and produce it upon the request of a law enforcement officer.

(3) Sales by consignment are allowed. Each consigned item must be accompanied by either a certification (FWS Form 3-2484) signed by the artist or Silver Hand insignia. All consignees, sellers, and purchasers must retain this documentation with each item and produce it upon the request of a law enforcement officer. All consignment sales are restricted to within the United States.

(4) The Office of Management and Budget reviewed and approved the information

collection requirements contained in this section and assigned OMB Control No. 1018–0168.

We use the information to monitor and enforce the regulations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed at 50 CFR 2.1(b).

Dated: June 13, 2017

Virginia H. Johnson

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2017-15465 Filed: 7/21/2017 8:45 am; Publication Date: 7/24/2017]